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waiver by plaintiff buyer of the times specified for delivery. had actually taken place.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 704.]

17. Release (§ 7*)—Understanding between Parties Held Not to Constitute Undertaking of Buyer Not to Sue.—Where the buyer of leather shoe laces, on the seller's failure to make installment deliveries promptly, insisted on his right to such prompt deliveries, and the seller said that, if the buyer had any intention to sue, he, the seller, preferred to stop there and meet the issue immediately, and the buyer said he had no intention to sue, so that deliveries by the seller continued, there was no enforceable undertaking on the part of the buyer not to sue, though all that passed in that connection between the parties could be considered by the jury in determining the matter of waiver by the buyer of time for deliveries.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 791.]

Error to Circuit Court of City of Richmond.

Motion for judgment by Frederick J. Fawcett against the Richmond Leather Manufacturing Company. Judgment for plaintiff, and defendant brings error. Judgment set aside, and new trial awarded. Reversed.

Scott & Buchanan and *D. H. Leake*, all of Richmond, for plaintiff in error.

Munford, Hunton, Williams & Anderson, of Richmond, for defendant in error.

BROWN v. COMMONWEALTH.

June 29, 1921.

[107 S. E. 809.]

1. Homicide (§ 100*)—Defendant Held Guilty as a Principal in Second Degree of Shooting with Intent to Kill.—Where defendant accompanied by two companions, went to the house of the prosecuting witness with the intention to fight such witness if he found that he was in the right as to a certain transaction, without defendant knowing that one of the companions was armed, and where during the fight that ensued one of his companions shot the prosecuting witness, the defendant was guilty as a principal in the second degree of unlawfully, maliciously, and feloniously shooting the prosecuting witness with intent to maim, disfigure, disable, and kill him, even though prior to the fight the defendant or his companion had no intention to shoot.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 148.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

2. Criminal Law (§ 67*)—"Principal in Second Degree" Defined.—A "principal in the second degree" is one not the perpetrator, but present, aiding and abetting the act done, or keeping watch or guard at some convenient distance.

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Principal.]

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 152.]

3. Criminal Law (§ 65*)—Mere Presence When Crime Is Committed Not Sufficient to Render One Guilty as an Aider or Abettor.

—Mere presence when a crime is committed is not sufficient to render one guilty as an aider or abettor, but there must be something to show that the person present and so charged in some way procured or incited or encouraged the act done by the actual perpetrator.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 75.]

4. Criminal Law (§ 552 (1)*)—That Person Present during Commission of Crime Aided Perpetrator May Be Shown by Circumstantial Evidence.—That a person present when a crime was committed in fact aided or abetted perpetrator in the commission of the crime may be shown by circumstantial as well as by direct evidence.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 818.]

Error to Cirporation Court of Norfolk.

Flynn Brown was convicted under two indictments of unlawfully, maliciously, and feloniously shooting another, with intent to maim, disfigure, disable, and kill him, and of simple assault, and he brings error. Affirmed.

William McK. Woodhouse, of Norfolk, for plaintiff in error.

John R. Saunders, Atty. Gen., and *J. D. Hank, Jr.*, and *Leon M. Bazile, Asst. Attys. Gen.*, for the Commonwealth.

CAMBELL et al. v. COMMONWEALTH.

June 29, 1921.

[107 S. E. 812.]

1. Criminal Law (§ 1159 (3)*)—Verdict on Conflicting Evidence Conclusive.—A verdict on conflicting evidence is conclusive.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 459, 460; 17 Va.-W. Enc. Dig. 69.]

2. Homicide (§ 83*)—Defendants Guilty of Voluntary Manslaughter, though They Did Not Intend to Kill Deceased.—Where defendants sought out the deceased with the purpose of attacking him, and where deceased was shot during the fight that ensued, they were guilty of voluntary manslaughter, one as a principal in the first de-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.